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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 505 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

SHAMBHUBHAI ALIAS PRAVINSINH LAXMANSINH SISODIA

Versus

STATE OF GUJARAT

Appearance:

MR PR NANAVATI for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 26/04/2000

ORAL JUDGEMENT

#. The petitioner - Shambhubhai @ Pravinsinh Laxmansinh Sisodiya has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by District Magistrate, Ahmedabad, in exercise of powers

under Section 3(1) of the PASA Act, dated December 20, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration 4 offences registered against the petitioner. The detaining authority also took into consideration the statements of three anonymous witnesses in respect of two incidents that occurred on 6th December, 1999 and came to conclusion that the petitioner is a "dangerous person", that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. Mr. Nanavati, learned advocate appearing for the petitioner submitted that so far as the statements of anonymous witnesses are concerned, they are not verified by the detaining authority. The detaining authority has relied upon the verification made by the Sub Divisional Magistrate to indicate that it was at the instance of the detaining authority. There is no communication between the pending cases and the material for recording subjective satisfaction.

#. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses in the statements are correct and genuine. Barring these statements, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detainee while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detainee of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under section 9(2) of the PASA Act, as there is no material to indicate the exercise as stated above (BAI AMINA v. State of Gujarat & others, 1981 GLR

1186 and Kalidas Chandubhai Kahar v. State of Gujarat & ors., 1993 (2) GLR 1659).

#. So far as the registered offences are concerned, this Court is taken through the FIRs which relate to individual incidents. It is, therefore, abundantly clear that there was no disturbance to public order. All that was involved was a law and order situation. Resultantly, the satisfaction arrived at by the detaining authority about the activities of the detainee being detrimental to public order is without any basis. Neither the statements nor the registered offences can be accepted to form the basis of this satisfaction.

#. In view of the above discussion, the reliance placed on by the detaining authority on the statements of anonymous witnesses and the registered offences cannot be upheld. The order of detention as well as the continued detention both are rendered bad in law. The petition, therefore, deserves to be allowed.

#. For the reasons stated above, this petition is allowed. The impugned order of detention dated December 20, 1999 is hereby quashed and set aside. The detainee Shambhubhai @ Pravinsinh Laxmansinh Sisodia is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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